

IN RE: PETITION FOR ZONING VARIANCE
S/S Nicholson Road, 1300' NW
of Mace Avenue
(329 Nicholson Road)
15th Election District
5th Councilmanic District
Oscar E. Smith, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 89-354-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit an accessory structure (detached) with a side yard setback of 10 inches in lieu of the required 2.5 feet, in accordance with Petitioner's Exhibit 1.

The Petitioners appeared, testified and were represented by their daughter, Sandra L. Bell, Esquire. Also appearing as interested parties were the adjoining property owners, Jerome and Karen Smetana. No Protestants appeared at the hearing.

Testimony indicated that the subject property, known as 329 Nicholson Road, consists of 10,000 sq.ft. zoned D.R. 5.5, and was purchased by Petitioners in 1953. In 1971, Petitioners constructed a detached garage in the rear of the property in an area they believed was 2.5 feet from the side property line. Testimony indicated that recently, while the Smetanas were having a survey performed on their property, they were advised the property line was different than originally believed by Petitioners. When the Smetanas advised Petitioners of this conflict, the Smiths, believing the property line was as previously determined, had their own survey performed. Petitioners testified their survey confirmed the base of their garage was 10" from the adjoining property line and

therefore filed the requested variance to correct the situation. Petitioners contend the granting of the requested variance will not create any detriment to the health, safety or general welfare of the community. They further note that the garage was not constructed with the intention of violating any zoning regulations but as a result of an improper survey of property lines for the neighborhood. Testimony indicated that the Smetanas, who acquired the property in 1984, are not in any way harmed as the garage was in existence at the time of settlement.

Based upon the testimony and evidence presented at the hearing, all of which was uncontradicted, in the opinion of the Deputy Zoning Commissioner the relief requested sufficiently complies with the requirements of Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.) and, therefore, should be granted. There is no evidence in the record that the subject variance would adversely affect the health, safety, and/or general welfare of the public. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 15th day of March, 1989 that the Petition for Zoning Variance to permit an accessory structure (detached) with a side yard setback of 10 inches in lieu of the required 2.5 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

-2-

1) The variance granted herein is limited to the base of the garage being no closer than 10 inches to the side yard property line.

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

ANN:bjs

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3333
J. Robert Haines
Zoning Commissioner

March 15, 1989



Sandra L. Bell, Esquire
1100 Charles Center South
36 S. Charles Street
Baltimore, Maryland 21201

RE: PETITION FOR ZONING VARIANCE
S/S Nicholson Road, 1300' NW of Mace Avenue
(329 Nicholson Road)
15th Election District - 5th Councilmanic District
Oscar E. Smith, et ux - Petitioners
Case No. 89-354-A

Dear Ms. Bell:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 494-3391.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

ANN:bjs

cc: Jerome and Karen Smetana
333 Nicholson Road, Baltimore, Md. 21221

People's Counsel

File

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 400 of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

1) Strict compliance with requirement would unreasonably prevent the use of the property and conformance would be unnecessarily burdensome.

2) The granting of the requested variance for the relaxation of the requested set back would give substantial relief.

3) It is requested that relief be granted in such fashion that the spirit of the ordinance be observed and public safety and welfare secured.

4) See attached.

Property is to be posted and advertised as prescribed by Zoning Regulations.

or we agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

We do solemnly declare and affirm under the penalties of perjury, that we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

Legal Owner(s):

Oscar E. Smith
(Type or Print Name)

Signature

Helen M. Smith
(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Sandra L. Bell

Name

1100 Charles Center South, 36 S. Charles St.

Baltimore, MD 21201

Phone No.

Attorney's Telephone No.

1100 Charles Center South, 36 S. Charles St.

Baltimore, MD 21201

Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 15th day of March, 1989.

1989

that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 108 - County Office Building in Towson, Baltimore County, on the 17th day of March, 1989, at 2 o'clock P.M.

J. Robert Haines

Zoning Commissioner of Baltimore County.

(over)

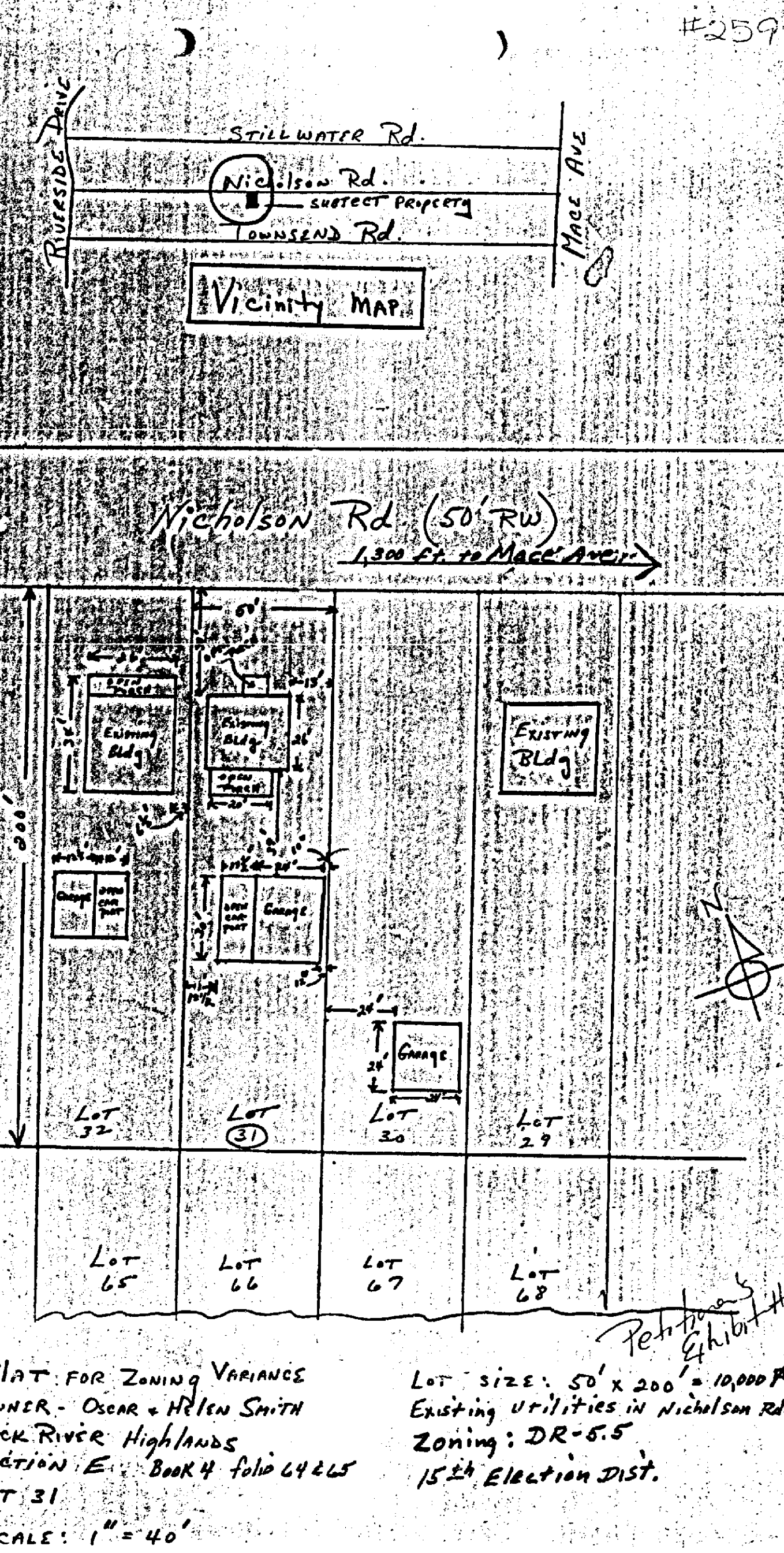
ATTACHMENT TO PETITION FOR ZONING VARIANCE OF OSCAR E. AND HELEN M. SMITH

(4) Applicants' garage was constructed 17 years ago by Delbert Fowler. Proper building permits were obtained by the contractor and County Building Inspectors approved the building. Contractor used site line of neighbors' fence (to west) to measure site. West neighbor told applicant his fence was built on "property line" after it was surveyed. Recent survey by M & H Development Engineers, Inc. reveals that west neighbors' fence line is almost two feet off line resulting in applicants' garage being closer to east neighbors' property line. The contractor died recently and his site plans are not available for review. Building is not more than ten inches at closest point to property line. At this point in time denial of zoning permit would create practical difficulty for applicants.

ZONING DESCRIPTION

Beginning for the same in the center of Nicholson Road laid out fifty feet wide and to be forever kept open as a public road at the distance of thirteen hundred feet north sixty four degrees west from the intersection of the center of Nicholson Road with the northwest side of Mace Avenue and running thence north sixty four degrees west bounding the center of Nicholson Road one hundred and fifty feet thence south twenty six degrees west parallel with Mace Avenue two hundred and twenty five feet thence south sixty four degrees east parallel with Nicholson Road one hundred and fifty feet and thence north twenty six degrees east parallel with Mace Avenue two hundred and twenty five feet to the place of beginning.

Being Lot 31, Section E, in the subdivision of Back River Highlands. Also known as 329 Nicholson Road in the 15th Election District.



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines, Zoning Commissioner
 FROM: Pat Keller, Deputy Director
 Office of Planning and Zoning
 SUBJECT: Zoning Petition Nos. 89-308-SPH (Jefferson); 89-318-A (Ridley); 89-350-A (Khoussani); 89-354-A (Smith); 89-359-A (Baltimore); 89-363-A (Cash); 89-364-A (Kaplan); 89-368-A (Appel); 89-369-A (Mathai); 89-370-A (Vinson); 89-376-A (Gambrell); 89-378-A (Liz); 89-379-A (Freundlich); 89-387-A (Babikow) and 89-393-A (Lubahn)

The Office of Planning and Zoning has no comment on the above listed petitions.

PK/af

89-354-A
 BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
 111 W. Chesapeake Avenue
 Towson, Maryland 21204

Your petition has been received and accepted for filing this
 4th day of January, 1989.

Petitioner Oscar E. Smith, et ux
 Attorney
 Received by: James E. Dyer
 Chairman, Zoning Plans
 Advisory Committee

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

February 27, 1989

COUNTY OFFICE BLDG.
 111 W. Chesapeake Ave.
 Towson, Maryland 21204

MEMBERS
 Bureau of Engineering
 Department of Traffic Engineering
 State Roads Commission
 Bureau of Fire Prevention
 Health Department
 Project Planning
 Building Department
 Board of Education
 Zoning Administration
 Industrial Development

Mr. Oscar E. Smith
 329 Nicholson Road
 Baltimore, MD 21221

RE: Item No. 259, Case No. 89-354-A
 Petitioner: Oscar E. Smith, et ux
 Petition for Zoning Variance

Dear Mr. Smith:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer
 JAMES E. DYER
 Chairman
 Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Ms. Sandra L. Bell
 1100 Charles Center South
 36 S. Charles Street
 Baltimore, MD 21201

Baltimore County
 Department of Public Works
 Bureau of Traffic Engineering
 Courts Building, Suite 405
 Towson, Maryland 21204
 (301) 887-3554

January 17, 1989

Dennis F. Rasmussen
 County Executive

Mr. J. Robert Haines
 Zoning Commissioner
 County Office Building
 Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for item numbers 210, 259, 260, 261, 262, 263, and 265.

MSP/lw

Baltimore County
 Fire Department
 Towson, Maryland 21204-2386
 494-4500

Paul H. Reincke
 Chief

January 12, 1989

J. Robert Haines, Zoning Commissioner
 Office of Planning & Zoning
 Baltimore County Office Building
 Towson, Maryland 21204

Re: Property Owner: Oscar E. Smith, et ux

Location: 329 Nicholson Road

Item No.: 259

Zoning Agenda: Meeting of 1/3/89

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- () 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- (X) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Paul H. Reincke, 1-6-89
 Special Inspection Division

NOTED & APPROVED: John F. O'Neill
 Fire Prevention Bureau

/s/

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

TO: Zoning Advisory Committee DATE: January 24, 1989
 FROM: Robert W. Bowling, P.E.
 RE: Meeting of January 3, 1989

The Developers Engineering Division has reviewed the zoning items for the subject meeting. We have no comments for Items 210, 259, 261, 262, 263, and 265.

For Item 260, The Trustees of Mount Carmel Methodist Episcopal Church the following comment applies:

Mt. Carmel Road is a State Road. Prettyboy Dam Road is an existing County road, which shall ultimately be improved as a 40-foot cross-section on a 60-foot right-of-way. The property owner is responsible to dedicate the right-of-way and necessary slope easements, at no cost to the County.

Robert W. Bowling
 ROBERT W. BOWLING, P.E., Chief
 Developers Engineering Division

RWB:s

Encls.